

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
54 Regional Drive, Unit 5  
Concord, New Hampshire 03301

## **Appeal of Lamar Bryant**

**Docket #2021-T-001**

**Department of Health and Human Services,  
Division of Children, Youth and Families, Sununu Youth Services Center**

The New Hampshire Personnel Appeals Board met in public session on Wednesday, January 27, 2021, under the authority of RSA 21-1:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Lamar Bryant, the Appellant. The following commissioners sat for this hearing: Presiding Officer Norman Patenaude, Esq., Jason Major, Esq., Commissioner Gail Wilson, and Commissioner Marilee Nihan. Mr. Bryant, who was represented at the hearing by SEA Representative Sean Bolton, appealed his dismissal as a Youth Counselor III with the Sununu Youth Services Center. Attorney John Martin appeared on behalf of the Division of Youth Children and Families (DCYF). The record of the hearing in this matter consists of pleadings filed by the parties prior to the date of the hearing, notices and orders issued by the Board, the audio recording of the hearing on the merits of the appeal and documents and video tape admitted into evidence.

### **ISSUES OF LAW:**

Per 1002.08 Dismissal (b) (7) (9) (12) (13)  
DCYF Policy No. 1051 Professionalism and Ethics  
DCYF Policy No. 2080 De-Escalation and Interventions  
DCYF Policy No. 2083 Restraint  
DCYF Policy No. 2082 Seclusion

**WITNESSES:**

George Dovas, Administrator II Juvenile Justice Supervisor  
Janelle Lavin, Supervisor VI  
Theresa Hannigan, Teacher III School Counselor at SYSC  
Lamar Bryant, Appellant

**BACKGROUND:**

The Appellant was hired as a Youth Counselor III with the DCYF Sununu Youth Services Center (SYSC) on June 24, 2011. He held that same position at the time of his dismissal on July 10, 2020. Between June 24, 2011 and July 10, 2020, the Appellant was issued one memo of counsel and one Letter of Warning (LOW) for incidents similar to the termination offense. He was also issued two letters of warning on separate matters unrelated to the offenses which led to his termination. None of these LOW's were appealed. After agency investigation of two incidents of excessive force on youth occurring on April 18, 2020 and May 21, 2020, the Appellant was terminated in accordance with Administrative Rules of the Division of Personnel, 1002.08 (b), which provides in relevant part that the "appointing authority may dismiss an employee without prior warning for offenses such as, but not necessarily limited to: (7) Violation of a posted or published agency policy or procedure, the text of which warns that violation of same may result in dismissal; (9) Endangering the life, health, or safety of other employee or individual served by the agency; (12) Falsification of any agency records received, maintained or utilized by the agency; and (13) Persistent refusal to follow the legitimate directives of a supervisor." The termination letter alleges the Appellant used excessive force on youth in multiple incidents, specifically related to the inappropriate use of physical restraint.

**MOTION RECEIVED:**

At the onset of the hearing, the State filed a motion to seal video footage which it intended to enter into evidence as Exhibit 1 and requested that it not be made available to any member of the public. The video footage involves the Appellant, Lamar Bryant, and includes depictions of youths, whose identities should remain protected from the public. The Appellant did not object to the motion. After a brief deliberation, the Board unanimously granted the motion to seal Exhibit 1.

## **FINDINGS OF FACT:**

The facts are derived from the record, the pleadings, testimony of witnesses, and video entered into evidence.

1. The Appellant began his employment with the State on June 24, 2011, as a Youth Counselor III with the DCYF Sununu Youth Services Center. In that role, the Appellant was responsible for providing a safe and secure environment for adjudicated or detailed juveniles, monitoring and assessing behavior to assure continued safety and security, implementing individual treatment plans for the youth in residence, and upholding the vision and mission of the agency through utilization of the Practice Model theories, beliefs and principles in daily practice. (State Exhibit II: Youth Counselor III supplemental job description)
2. On January 5, 2017, the Appellant was issued a Memo of Counsel for inappropriate use of physical restraint on a youth in his care. In this incident, the youth failed to stop talking after being directed to do so. The Appellant walked over to the youth, grabbed him by the sweatshirt, lifted him out of the seat, and forcefully placed him against the wall. The youth's head hit the wall, and his legs were dangling above the ground.
3. At the time of this incident, the Appellant took responsibility for his actions and stated the youth "got under his skin" after the youth engaged in name calling, and threats. The Appellant stated that he understood how detrimental this could be to youth and staff, that he had made a poor decision, and that he over-reacted. The Appellant was issued a Memo of Counsel for his actions in the incident. As part of his Corrective Action Plan (CAP), he agreed to remain calm and even-tempered at all times and speak to youth in an appropriate and respectful tone. He also agreed to review relevant agency policies.
4. On July 19, 2017, the Appellant was issued a LOW for inappropriate use of physical restraint on a youth in his care, in violation of the agency's Professionalism and Ethics Policy and its Use of Restraint Policy. In this incident, the Appellant pulled the youth from his room. The youth sustained a minor injury to his left hand.
5. In testimony, the Appellant indicated this youth "liked to run away from his problems" and the Appellant wanted to prevent him from doing that. The Appellant was issued a LOW for his action in this incident. In the CAP, the Appellant agreed to remain calm and even-tempered at all times and speak to youth in an appropriate and respectful tone of voice, and that if he felt he could not control his reaction/anger, he would immediately contact his Supervisor. He also agreed to review relevant agency policies.
6. On April 18, 2020, the Appellant engaged in physical restraint of a youth in his care, after the youth failed to comply with requests to discontinue inappropriate behavior. The youth refused to comply with instruction to return to his room for a cooling off period. The Appellant then attempted to lift the youth by the arm, the youth fell to the floor, and the Appellant proceeded to pick him up by the armpits and physically pushed him into his room.
7. The April 18, 2020, incident did not come to the attention of supervisors until late May, 2020, when staff informed supervisors of it after another incident occurring on May 21, 2020.

8. After review of the video footage of the April 18, 2020 incident, supervisors realized the incident report written by the Appellant did not accurately report the incident. The Appellant reported the youth "fell to the floor," failing to note that it was in the midst of physical restraint by the Appellant as the video footage showed. The type of force reported had been minimized to indicate that "open-hand guide" was used to move the youth to his room, when the video footage indicated a hold restraint was used.
9. On May 21, 2020, the Appellant engaged in excessive force of a youth in his care. After the youth shouted verbal obscenities and threats of physical violence to the Appellant, the youth went to his room and then came outside his door and sat in a chair to put his sneakers on. After the youth refused instructions to return to his room, the Appellant grabbed the youth by the arms and pushed him into his room.
10. Again, when the Appellant wrote the incident report, he minimized the type of restraint used on the youth. The Appellant reported that he "assisted [the youth] to his feet and escorted him to the room."
11. When the Appellant was questioned about the incident, he did not understand why he was being questioned, stating the incident "did not result in bloodshed" and was "properly reported."
12. On May 22, 2020, a meeting between the Appellant, his supervisor, Janelle Lavin, and the SYSC psychologist, Dr. Morin, was held to review the incident of the previous day. Dr. Morin discussed the traumatic impact that use of force can have on youth, especially those who have experienced significant trauma in the past.
13. On June 18, 2020, an investigatory meeting was held to review the previous incidents of April 18 and May 21, along with relevant agency policies and the Appellant's training record. The Appellant was provided an opportunity to respond. He felt he was unable to adequately perform his duties due to the lack of consequences for youth behavior. He denied having been previously spoken to about his aggressive behavior toward youth in custody.
14. On June 25, 2020, a follow-up investigatory meeting was held. At the meeting, the Appellant acknowledged being familiar with relevant policies. His supervisors explained to him how his actions were not consistent with agency policy. The Appellant did not understand why his reaction to the incidents was being called into question, stating that he was attempting to prevent "the rest of the unit going off" in the April incident and was "trying to prevent any youth on the floor from catching a felony" in the May incident.

15. On July 9, 2020, an Intent to Discipline meeting was held. The Appellant's supervisors, Janelle Lavin, and George Dovas, Administrator of Residential Services, presented their case of excessive and inappropriate use of force. Relevant policies that were violated were reviewed, including Professionalism and Ethics, De-escalation and Interventions, Restraint Policy, and the Seclusion Policy. The Appellant responded by indicating his training was inadequate, that he was angry and frustrated about being questioned about his response to the incidents. He also stated he disagreed with the CSU policy and returning youth to their respective units, and that report writing policies are not conducive to writing them accurately.
16. On July 10, 2020, the Appellant was issued a letter of termination by his supervisor, Janelle Lavin. At the Dismissal meeting, the Appellant became visibly agitated, engaging in verbal challenges and physical actions, eventually storming out of the meeting.

#### **RULES AND POLICIES IMPLICATED:**

Per 1002.08 Dismissal (b): An appointing authority may dismiss an employee without prior warning for offenses such as, but not necessarily limited to:

- (7) Violation of a posted or published agency policy or procedure, the text of which warns that violation of same may result in dismissal,
- (9) Falsification of any agency records received, maintained or utilized by the agency,
- (13) Persistent refusal to follow the legitimate directives of a supervisor.

The following DCYF Policies are implicated in this case:

DCYF Policy No. 1051 Section II:

(A) Staff will competently perform job responsibilities set forth in the class specification, supplemental job description, as directed by their supervisor, manager or administrator;

(C) Staff must recognize that they serve as important role models for clients and colleagues in the performance of their official duties. Accordingly, staff will demonstrate positive behavior and responsible work ethic; unprofessional conduct that interferes with staff performance and/or interferes with the ability of the Division to meet its mission may lead to disciplinary action.

(D) Consistent with the protection of the public interest, staff will serve each client with integrity and appropriate concern for the client's welfare and with no purpose of personal gain.

(D),1 (a) (b) Staff must be diligent in their responsibility for documentation which ensuring that all reports are timely, relevant, and accurate pursuant to the state and federal laws, policy, and supervisory directives.

DCYF Policy No. 2080 Section I:

- (A) provides that staff will ask the youth defusing questions designed to provoke thought and give staff an opportunity to recognize and assess a situation as well as keep the youth in a thinking areas of the brain,
- (B) staff will validate youth's thoughts and feelings,
- (C) staff will direct the youth to review their Personal Safety Plan and use coping skills specific to the circumstances,
- (D) youth may be advised, when practicable, that loss of level, trust status, furlough status, or major consequences may be avoided,
- (E) staff should set reasonable and enforceable limits,
- (F) youth who respond positively should be praised,
- (G) youth who do not respond or continue to escalate should continue to have opportunities to de-escalate in the absence of safety concerns.

DCYF Policy. No 2080 Section II: Staff will attempt to resolve a situation with the fewest number of staff and other youth present while accounting for the safety of all.

DCYF Policy No. 2080 Section III: If a youth remains oppositional but is not presenting a safety concern, staff should employ a team approach. Staff responding will coordinate their response with the first staff before intervening depending on the circumstances.

DCYF Policy No. 2080 Section VI: If the youth is unable to return to programming after the first hour, the Supervisor on duty must approve the continued use of Cooling Off.

DCYF Policy No. 2080 Section VII: Staff may call for a response team when justified in their professional judgement.

DCYF Policy No. 2080 Restrictive Intervention Section I: Staff will use restrictive interventions only when a youth's behavior presents a substantial and imminent risk of harm to the youth or others... and efforts to de-escalate the youth have either been exhausted or are not possible.

DCYF Policy No. 2080 Restrictive Intervention Section IV: When circumstances permit, staff shall obtain prior authorization from the Supervisory on duty before implementing a restrictive intervention. In the absence of supervisory approval, staff may determine the use of restrictive interventions are authorized if the criteria in Section I are met and the restrictive intervention is a reasonable response. Once safe, staff shall immediately notify the SYSC Director of Operations, Administrator of Clinical and Residential Services, and Medical department staff that a restrictive intervention had been implemented.

DCYF Policy No. 2082 Seclusion Section I: Staff will only use seclusion when a youth's behavior presents a substantial and imminent risk of physical harm to the youth or others, and efforts to deescalate have

been exhausted or proven unsuccessful, or efforts to de-escalate are determined unnecessary due to the emergent nature of the behavior.

DCYF Policy No. 2082 Section V: Unit staff shall perform continuous direct visual and auditory monitoring for the duration of any use of seclusion and document the monitoring in writing.

DCYF Policy No. 2083 Restraint Section I: Staff will ONLY use restraint when a youth's behavior presents a substantial and imminent risk of serious body harm to the youth or others, and:

- a. Efforts to de-escalate have been exhausted or provide unsuccessful, or
- b. Efforts to de-escalate are determined unnecessary.
- c. Restraint may never be used...as punishments for the behavior of a youth.

DCYF Policy No. 2083 II: When circumstances permit, staff shall obtain prior approval from the supervisor on duty before implementing a restraint.

DCYF Policy No. 2083 Section VII: The following restraint techniques are prohibited: A. The use of restraint as punishment, B. Any technique that unnecessarily subjects the youth to ridicule, humiliation, or emotional trauma.

### **DISCUSSION and ORDER**

The Appellant must establish by a preponderance of the evidence that his dismissal was unlawful, in violation of applicable rules, unwarranted in light of the facts in evidence, or unjust pursuant to Per-A 207.12 (b).

Policies at the Sununu Youth Services Center recognize that the use of force has a traumatic impact on youth, especially those who have experienced significant trauma in their past. As such, policies require the use of multiple de-escalation techniques in an attempt to regain a youth's appropriate behavior prior to any use of force such as physical restraint.


The Board heard testimony regarding multiple incidents, two occurring in 2017 and two occurring in 2020. The Appellant received a memo of counsel for the first incident instead of a LOW even though the incident involved a substantial use of force because supervisors at the time believed they needed to start at the beginning of progressive discipline ladder. They also recognized the Appellant's willingness to accept responsibility for his actions and work to prevent future such incidents. When the second incident occurred shortly thereafter, the Appellant again accepted responsibility for not following de-escalation procedures. Following the progressive discipline policy, supervisors issued a LOW which included a CAP to review relevant policies and directive to remain calm and even tempered.

After a span of three years, two additional incidents occurred where the Appellant failed to use de-escalation techniques and used unnecessary and/or excessive physical force to control the behavior of the youths involved. In these incidents, the Appellant used physical restraint prior to allowing the youths to rely on their Personal Safety Plan and appropriate coping skills to modify their behavior. The Appellant failed to take responsibility for not following procedures, and instead justified his actions by stating that he was preventing harm to others on the unit or to the youth themselves. He further stated that he did not see why supervisors were making a big deal of these issues.


In these latter two incidents, the Appellant failed to accurately report his actions in the incidents. In a previous, unrelated incident, the Appellant documented that a certain treatment had occurred when it did not. He was subsequently disciplined for this incident of providing inaccurate documentation. Based on this history, the Board believes that the Appellant misstated the facts because he knew his physical response to the youth was inappropriate and he did not want to call it to the attention of supervisors.

The Board was concerned about the progression of the Appellant's emotional and reckless response to the incidents. He did not admit that non-physical interventions could have been used to avoid physical action. He failed to recognize the intensity of the physical action exerted against the youths. His inability to acknowledge his role in the latter two incidents showed a progression of indifference toward adhering to policies and responding appropriately to youths during their times of distress. The Board concluded that these physical actions were severe enough to warrant termination, particularly in light of his performance history.

In recognition of the Appellant's intense physical response to the youths involved, his lack of acceptance of responsibility, his previous propensity to falsify documentation for self-preservation, and hearing no convincing evidence that the State acted inappropriately, the Board agrees this Appellant failed to meet his burden of proof. The Board voted unanimously to DENY the appeal and uphold the dismissal issued to the Appellant.

  
Board Vice Chair Norman Patenaude, Esq.

  
Jason Major, Esq.

  
Commissioner Gail Wilson

  
Commissioner Marilee Nihan

cc: Lorrie Rudis, Director of Personnel



John Martin, Esq.  
Sean Bolton